IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.817 OF 2004
IN
NOTICE OF MOTION NO.1578 OF 2003
IN
SUIT NO.145 OF 2003

M/s.Padam Exports & Anr. .. Appellants.

V/s.

Union of India & Ors. .. Respondents.

Mr.G.L.Jain appellant No.2 present in person.

Mr.S.R. Rajguru for the respondents.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 23RD DECEMBER, 2004.

P.C. :

Heard.

2. Admit.

3. Mr.S.R. Rajguru, the learned counsel waives service for the respondents.

4. Heard finally at this stage.

5. The appellants are the original plaintiffs. The Notice of Motion No.1578 of 2003 was taken out by the plaintiffs for following reliefs :

> "(a) Ex-parte Final Order and Decree be passed in favour of the Plaintiffs granting all reliefs sought in the prayer clauses of the Plaint.
>
> (b) Payment of Court Fees may be waived as the Plaintiffs are not in a position to pay further Court Fees.
>
> (c) 50% amount of the final order and decree passed be ordered to be paid to the Plaintiffs and remaining amount ordered to be deposited in the Court as the process of realisation of the decretal amount will take time and Plaintiffs shall suffer further agony.
>
> (d) Ad-interim and interim reliefs in terms of Prayer (a), (b) and (c) above.
>
> (e) Any other further reliefs as deemed fit and proper to this Hon'ble Court.
>
> (f) Cost of the Suit and Notice of Motion"

6. However, the learned single Judge passed the order thus :

> ". This Notice of Motion is for dismissal of the suit because Written Statement was not filed in time. Admittedly, now written statement has been filed. Therefore, in my opinion, it will not be in the interest of justice to dismiss the suit only because the Written Statement has been filed late.
>
> . Notice of motion disposed of."

7. It would, thus, be seen that there is apparent error in the impugned order and non consideration of the prayer made by the plaintiffs in the notice of motion.

8. Accordingly, the impugned order is set aside. The notice of motion No.1578 of 2003 is restored to the file of the learned motion Judge for fresh consideration in accordance with law.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)